

State of California  
Regional Water Quality Control Board  
San Diego Region

EXECUTIVE OFFICER SUMMARY REPORT  
October 10, 2012

ITEM: 8

SUBJECT: Process and Prioritization of Requests for Cleanup and Abatement Account funding and Supplemental Environmental Projects (*Chiara Clemente, Jeremy Haas*)

PURPOSE: To inform discussion regarding the State’s Cleanup and Abatement Account fund, Supplemental Environmental Projects, and prioritizing funding requests for water quality projects proposed in the Region.

RECOMMENDATION: There is no recommendation as this is an information item and the Board will take no action.

KEY ISSUES: None.

DISCUSSION: Cleanup and Abatement Account

The Cleanup and Abatement Account (CAA) was created by Water Code sections 3440-13443 to provide public agencies with grants for the cleanup or abatement of a condition of pollution when there are no viable responsible parties available to undertake the work. The account is funded by monies: (a) appropriated by the Legislature; (b) contributed to the CAA by any person and accepted by the State Water Board; (c) collected as part of criminal penalties and all moneys collected civilly under any proceeding brought pursuant to any provision of Division 7 of the California Water Code; and (d) recovered pursuant to Water Code section 13304. The State Water Board, the Regional Water Boards, and any public agency with the authority to clean up waste or abate the effects of a waste on surface and ground waters of the State may request funds from the account. CAA funds are for Statewide use, and thereby subject to State Water Board review and approval. The process for requesting funds is described in the attached flow chart (Supporting Document 1).

Generally, CAA funds are intended for the emergency cleanup or abatement of a condition of pollution where there are no viable responsible parties (RP) available to undertake the work or when

emergency conditions require the State to act. If a person is identified as an RP for the discharge of waste or threatened discharge of waste that results in expenditure of funds from the CAA, the State Water Board may seek to recover the funds from the discharger, along with interest and applicable legal fees, as specified in Water Code section 13304(c).

Chapter 4.4 of the State Water Board's Administrative Procedures Manual (Supporting Document 2) identifies appropriate uses of funds from the account. Preferences for use of the CAA are (in order of priority):

1. Emergency cleanup projects for public safety;
2. Projects that address disadvantaged communities' environmental justice infrastructure needs;
3. Cleanup and/or abatement of water bodies on the 2006 list of Clean Water Act Section 303(d) impaired waters, that will help to implement a Total Maximum Daily Load;
4. Cleanup and/or abatement of non-point source legacy pollutants (i.e. storm water) when the source(s) of the pollution have been mitigated;
5. Cleanup and/or abatement of pollution in high-use groundwater basins;
6. Cleanup and/or abatement of a contaminated site when the viable responsible party has not been identified;
7. Projects that promote habitat restoration through non-profit organizations that collaborate with the Regional Water Boards and encourage public outreach and education; and
8. Completion of a study/plan and/or monitoring addressing significant Statewide water quality problems.

#### Supplemental Environmental Projects (SEPs)

When civil liabilities are assessed by a Water Board, dischargers may satisfy up to 50 percent of the assessed penalty by proposing to fund SEPs, which are projects that will contribute to the enhancement, protection or restoration of water quality and beneficial uses of waters in the San Diego Region. A project is considered to be "supplemental" if the project does not qualify to be funded and implemented through an existing program and does not involve an existing obligation or requirement of a Water Board. In 2009, the State Water Board adopted a SEP Policy (Supporting Document 3), requiring SEPs to meet the following criteria:

1. A SEP shall only consist of measures that go above and beyond the otherwise applicable obligations of the discharger;
2. The SEP shall directly benefit or study groundwater or surface water quality or quantity and the beneficial uses of waters of the State;
3. A SEP shall never directly benefit, in a fiscal manner, a Water Board's functions, its members, its staff, or family of members and staff;
4. The scope of the SEP must be defined at the time the SEP is authorized by a Water Board;
5. When appropriate, the SEP must include documented support by other public agencies, public groups, and affected persons;
6. The SEP must provide either a direct benefit to the harmed area or provide region-wide or Statewide use or benefit;
7. The SEP proposal must include, based on the stage of development, documentation that the project complies with the California Environmental Quality Act;
8. The SEP proposal must address whether it can be the basis for additional funding from other sources;
9. The entity identified as responsible for completing the SEP must have the institutional stability and capacity to complete the SEP. Such consideration should include the ability of the entity to accomplish the work and provide the products and reports expected;
10. The SEP proposal must include, where appropriate, success criteria and requirements for monitoring to track the long-term success of the project; and
11. There must be a nexus between the violation(s) and the SEP. In other words, there must be a relationship between the nature or location of the violation and the nature or location of the proposed SEP.

Similar to the current item, in 2009 the San Diego Water Board asked staff to report on priority uses of SEPs for the Region. In September 2009, staff presented a two-step process for making SEP recommendations to the Board. First, staff would consider whether the SEP would serve the interests of the Board by providing any of the following four outcome-oriented performance objectives:

1. Supplemental ambient monitoring;
2. Supplemental cleanup of legacy or non-point pollution;
3. Supplemental protection or restoration of wetlands and streambeds; and

4. Supplemental basin planning studies.

Second, staff would consider the following five-part criteria:

1. Does the SEP further the mission of the Board?
2. Has the Discharger considered and committed to the SEP?
3. Does the SEP have a definitive beginning and end, and is the SEP timely?
4. Is the SEP “shovel-ready;” are permits, planning, and design complete? and
5. Are there measureable performance objectives?

Staff would then provide written evaluations of the criteria to the Board for each agenda item in which a SEP is proposed.

Summary

The State Water Board’s CAA Fund and the framework for SEPs have separate and distinct criteria, priorities, and limitations. Administration of both SEPs and CAA projects can take a considerable amount of staff resources. Therefore, it is important that the Board support and select only those projects that are of the highest priority.

The San Diego Water Board’s pending Practical Vision will further define our regional priorities. In the interim, staff will continue to evaluate proposed water quality improvement projects in accordance with the criteria provided above.

LEGAL CONCERNS: None.

- SUPPORTING DOCUMENTS:
1. [Cleanup and Abatement Application](#) Flow Chart (Division of Financial Assistance)
  2. [Administrative Procedures Manual](#), Chapter 4.4
  3. [Policy on Supplemental Environmental Projects](#)

PUBLIC NOTICE: Notice of this item was provided in the Meeting Notice and Agenda for the October 10, 2012 Board meeting, which is posted on the website.